

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARJORIE BRUMFIELD-MOUDGIL,

No. C 05-03989 WHA

Plaintiff,

v.

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S CROSS-MOTION
FOR SUMMARY JUDGMENT**

INTRODUCTION

In this social-security appeal, the Court finds that the administrative law judge properly considered all medical opinions in his findings. The Court further finds that the ALJ properly addressed the issue of plaintiff's subjective complaints. Accordingly, plaintiff's motion for summary judgment is **DENIED** and defendant's cross-motion for summary judgment is **GRANTED**.

STATEMENT

1. PROCEDURAL HISTORY.

On August 7, 2002, plaintiff Marjorie Brumfield-Moudgil applied for Disability Insurance Benefits and Supplemental Security Income, alleging that she was unable to work due to diabetes, spinal arthritis, vertigo, gallbladder removal, and wrist surgeries (AR 93-96, 362-64, 367). Plaintiff was 56 years old at the alleged onset date (AR 93). The applications

1 were denied initially and on reconsideration (AR 68–71, 73–77, 367–70). Plaintiff then
2 requested an administrative hearing, which was held before ALJ Brenton L. Rogozen (AR 80).

3 The ALJ rendered a decision on July 27, 2004, finding that plaintiff was not disabled
4 (AR 15–21). Plaintiff then requested administrative review (AR 11). On August 8, 2005, the
5 Appeals Council denied her request. Plaintiff filed an action before this Court, seeking judicial
6 review pursuant to 42 U.S.C. 405(g). The parties now make cross-motions for summary
7 judgment.

8 **2. THE ADMINISTRATIVE HEARING.**

9 At the hearing before the ALJ, plaintiff testified that she had completed high school
10 and one-and-a-half years of college (AR 31). Prior to the alleged onset of her disability,
11 plaintiff explained that she worked in secretarial support for IBM and as an assembly specialist
12 for a security company (AR 31–32). Plaintiff stated that she had not returned to work since her
13 gallbladder surgery in 2001 because of depression brought on by financial problems and a death
14 in her family (AR 32–33). Plaintiff noted mood swings, crying spells and problems with
15 concentration and memory as symptoms of her depression (AR 35).

16 Plaintiff stated that during a typical day she takes a bath, gets dressed, watches TV, and
17 prepares food (AR 45). She also attends church weekly and makes trips to the grocery store
18 three or four times a week (AR 36, 45). She noted that these outings made her feel
19 uncomfortable and that people “stressed her” (*ibid.*).

20 **3. MEDICAL EVIDENCE.**

21 The medical evidence was summarized in the ALJ’s decision (AR 17–20). In brief,
22 Neeraj Kochhar, M.D., began treating plaintiff on March 10, 2003, for general medical care,
23 hypertension, diabetes mellitus, hyperlipidemia, depression, anxiety, degenerative disc disease,
24 osteoporosis and chronic-pain syndrome (AR 272). On July 21, 2003, Dr. Kochhar completed a
25 Multiple Impairments Questionnaire in which he opined that the claimant could not perform
26 competitive work based on laboratory findings, a lumbar MRI and a clinical examination
27 (AR 272–79). On April 20, 2004, Dr. Kochhar completed a second Multiple Impairments
28 Questionnaire and reached the same conclusion (AR 353–61).

1 Les Kalman, M.D., Psy.D., performed an independent psychiatric evaluation of plaintiff
2 on February 29, 2004. Dr. Kalman diagnosed “depressive disorder not otherwise specified” and
3 an adjustment disorder, finding plaintiff’s functional limitations were mild, imposing some
4 moderate limitations in the ability to understand and remember detailed instructions and in the
5 ability to maintain attention and concentration for extended periods (AR 345–52). Dr. Kalman
6 assessed a Global Assessment of Functioning (“GAF”) of 55 (AR 345).

7 Ashley Cohen, Ph.D., performed a consultative examination of the plaintiff on
8 November 4, 2003. Dr. Cohen diagnosed a cognitive disorder, an adjustment disorder,
9 borderline intellectual functioning, and prescription dependence (AR 299–302). Dr. Cohen,
10 also assessing a GAF of 55, found that plaintiff had some cognitive weaknesses and memory
11 problems that could limit her ability to perform competitive work (*ibid.*). Dr. Cohen, however,
12 determined that plaintiff could perform simple repetitive tasks (*ibid.*).

13 ANALYSIS

14 1. LEGAL STANDARD.

15 The Commissioner’s decision must be upheld if it is supported by substantial evidence
16 and free of legal error. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Substantial
17 evidence is “more than a scintilla” but “less than a preponderance.” *Smolen v. Chater*, 80 F.3d
18 1273, 1279 (9th Cir. 1996). This means “such relevant evidence as a reasonable mind might
19 accept as adequate to support a conclusion.” A court must “review the administrative record as
20 a whole, weighing both the evidence that supports and that which detracts from the ALJ’s
21 conclusion.” *Andrews*, 53 F.3d at 1039. If the evidence “is susceptible to more than one
22 rational interpretation,” then the ALJ’s decision must be upheld. *Id.* at 1040.

23 A claimant has the burden of proving disability. Disability claims are evaluated using a
24 five-step inquiry. 20 C.F.R. 404.1520. In the first four steps, the ALJ must determine:
25 (1) whether the claimant is working, (2) the medical severity and duration of the claimant’s
26 impairment, (3) whether the disability meets any of those listed in Appendix 1, Subpart P,
27 Regulations No. 4, (4) whether the claimant is capable of performing his or her previous job and
28 (5) whether the claimant is capable of making an adjustment to other work. 20 C.F.R.

1 404.1520(a)(4)(i)-(v). In step five, “the burden shifts to the Secretary to show that the claimant
2 can engage in other types of substantial gainful work that exists in the national economy.”
3 *Andrews*, 53 F.3d at 1040. The use of the Medical-Vocational Guidelines, or “grids,” at step
4 five is proper “where they completely and accurately represent a claimant’s limitations” and the
5 claimant can “perform the full range of jobs in a given category.” *Tackett v. Apfel*, 180 F.3d
6 1094, 1101 (9th Cir. 1999). Although “the fact that a non-exertional limitation is alleged does
7 not automatically preclude applications of the grids,” the ALJ must first determine whether the
8 “claimant’s non-exertional limitations significantly limit the range of work permitted by his
9 exertional limitations.” *Id.* at 1102.

10 2. THE ALJ’S FIVE-STEP ANALYSIS.

11 At step one of the analysis, the ALJ found that plaintiff had not engaged in substantial
12 gainful activity since the alleged onset of her disability (AR 16). Next, the ALJ found that the
13 claimant’s hypertension, hyperlipidemia, osteoporosis, anxiety and chronic back pain were not
14 “severe,” but that her mild arthritis and mild depression impairments did qualify as “severe”
15 (AR 17). At step three, however, the ALJ found that none of plaintiff’s impairments,
16 considered separately or cumulatively, met or equaled any of the impairments listed in the
17 Social Security regulations (*ibid.*). In step four, the ALJ found that plaintiff had the residual
18 functional capacity to “perform medium work and simple repetitive tasks” (AR 20). The ALJ
19 thereby concluded that plaintiff would not be able to return to her past work (AR 19).

20 Finally, the ALJ conducted the fifth step of the analysis and applied the grids. The ALJ
21 determined that plaintiff had the exertional capacity to perform medium, light and sedentary
22 work (AR 20). The ALJ also found that plaintiff’s capacity to perform medium work was
23 “somewhat diminished by limitations in mental functioning to simple repetitive tasks,” but that
24 this limitation was not significant. Given the large number of unskilled jobs available in the
25 medium, light and sedentary levels, the number of jobs this limitation would exclude was
26 insignificant (*ibid.*). Finding that the occupational base was not substantially limited, the ALJ
27 concluded that there were jobs existing in significant numbers in the national economy which
28 plaintiff was able to perform (*ibid.*).

1 Plaintiff contends that the ALJ did not properly consider the medical opinions of
2 Dr. Kochhar, Dr. Kalman, and Dr. Dusay (Br. 8–10). She further argues that the ALJ
3 improperly found her subjective complaints less than credible, and contends that this led the
4 ALJ to improperly applying the grids by not obtaining a vocational expert to testify as to the
5 effects of her non-exertional limitations (Br. 10–11).

6 **3. MEDICAL OPINIONS.**

7 The Ninth Circuit distinguishes among the opinions of three types of physicians:
8 “(1) those who treat the claimant (treating physicians); (2) those who examine but do not treat
9 the claimant (examining physicians); and (3) those who neither examine nor treat the claimant
10 (non-examining physicians).” *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Generally, a
11 treating physician’s opinion carries more weight than an examining physician’s opinion, and an
12 examining physician’s opinion is given more weight than a non-examining physician’s opinion.
13 An ALJ may only rely on the contradicting opinion of a non-treating doctor over that of a
14 treating physician if specific and legitimate reasons are given. These reasons must be supported
15 by substantial evidence in the record. *Id.* at 830–31.

16 *First*, plaintiff contends that the ALJ simply ignored the opinion of Dr. Kochhar, the
17 treating physician. This order finds that the ALJ did not simply ignore the opinion of
18 Dr. Kochhar but properly rejected his opinion due to a lack of objective medical evidence.
19 The ALJ specifically states that “the treating physician’s opinion is not supported by the
20 substantial evidence of record and is not entitled to controlling weight” (AR 18). “An ALJ may
21 discredit treating physician’s opinions that are conclusory, brief, and unsupported by the record
22 as a whole, or by objective medical findings.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
23 1190, 1195 (9th Cir. 2004) (internal citation omitted). In the instant case, there is nothing in the
24 record to indicate that claimant underwent any independent psychological testing or
25 examination before the examination conducted by Dr. Cohen. Dr. Kochhar made only passing
26 reference to depression in his Multiple Impairments Questionnaire (AR 272–79). At no time is
27 there indication of any objective testing or clinical findings that would lead Dr. Kochhar to this
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1 opinion. This order finds that the ALJ offered specific and legitimate reasons to reject
2 Dr. Kochhar's opinions.

3 *Second*, plaintiff argues that the opinion of Dr. Kalman, the examining psychiatrist, was
4 misrepresented when characterized by the ALJ. Plaintiff cites *Reddick v. Chater*, 157 F.3d 715
5 (9th Cir. 1998), which found that mis-characterization of the record warranted reversal. In
6 *Reddick*, the court found that the ALJ erred in characterizing the record due to considerable
7 evidence in the record that detracted from the ALJ's conclusions. *Id.* at 722–23. In the instant
8 case, the ALJ stated that “Dr. Kalman diagnosed a depressive disorder and an adjustment
9 disorder with a GAF of 55,” and that “Dr. Kalman opined that the claimant's limitations in
10 functioning are mostly mild with some moderate limitations in the ability to perform detailed
11 tasks” (AR 18). This corresponds directly with Dr. Kalman's Psychiatric/Psychological
12 Impairment Questionnaire in the record (AR 345–52). Granted, the record is more detailed than
13 the ALJ's characterization, but the ALJ did not mischaracterize the evidence in his summary.

14 Finally, plaintiff argues that the ALJ failed to give any weight to the opinion of
15 Dr. Kalman and ignored the testimony of the medical advisor, Dr. Dusay. Plaintiff contends
16 that Dr. Dusay expressly agreed with the diagnostic functional findings of Dr. Kalman and
17 that the opinion of both Dr. Kalman and Dr. Dusay were inconsistent with the ALJ's
18 functional-capacity finding (Br. 9–10). Plaintiff cites *Gallant v. Heckler*, 753 F.2d 1450, 1456
19 (9th Cir. 1984), which held that an ALJ cannot reach a conclusion by ignoring competent
20 evidence that would support the opposite result. In the instant case, the record shows that in
21 fact the opinions of Dr. Kalman and Dr. Dusay were consistent with the ALJ's ultimate findings
22 and, therefore, support the conclusions.

23 The ALJ stated that “the opinions of the evaluating and examining DDS experts are
24 given the greatest weight” (AR 18). This includes Dr. Dusay and Dr. Cohen, the examining
25 physician for the DDS. Dr. Dusay agreed with the findings of both Dr. Cohen and Dr. Kalman
26 and found that they “basically said the same thing” (AR 49–51). Both Dr. Cohen and
27 Dr. Kalman found plaintiff had a GAF of 55, which Dr. Dusay explained does not usually meet
28 the requirements of the Social Security regulations (AR 49). Dr. Dusay further stated that he

1 did not believe that plaintiff met or equaled the requirements (AR 50). The record clearly
2 shows that the opinions of Dr. Dusay and Dr. Kalman were consistent with both Dr. Cohen and
3 the ALJ's ultimate findings.

4 **4. SUBJECTIVE COMPLAINTS.**

5 Plaintiff argues that the ALJ improperly found the subjective complaints to be less than
6 credible. If the ALJ finds a claimant's testimony to be unreliable as to the severity of his
7 symptoms, "the ALJ must make a credibility determination with findings sufficiently specific to
8 permit the court to conclude that the ALJ did not arbitrarily discredit claimant's testimony."
9 *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). *Barnhart* goes on to say that if the
10 ALJ's credibility finding is supported by substantial evidence in the record then the finding may
11 not be questioned. *Id.* at 959. In the instant case, the ALJ acknowledged that plaintiff had some
12 mild limitations and sadness, but clearly stated that "there is no evidence of an underlying
13 impairment that would be so severe as to limit all work" (AR 19). The ALJ explained that he
14 was "giving the claimant the greatest benefit of the doubt" (*ibid.*).

15 Originally, plaintiff applied for disability insurance benefits due to various physical
16 impairments and did not allege depression or any other mental impairments. Plaintiff now
17 asserts that her "impairments are primarily psychiatric in nature" (Br. 7). The ALJ pointed to
18 several medical opinions in the record that support his finding of not disabled, including
19 Dr. Cohen's opinion that plaintiff could perform simple repetitive tasks and Dr. Kalman's
20 opinion that the claimant's limitations were mostly mild with some moderate limitations in the
21 ability to perform detailed tasks (AR 18). The record further shows that despite plaintiff's
22 claims of severe depression, there is no evidence of any psychiatric treatment or testing before
23 commencement of her disability proceedings (AR 47). This order finds that substantial
24 evidence supports the ALJ's credibility determination as to plaintiff's subjective complaints.

25 Plaintiff also argues that the ALJ was required to obtain vocational expert testimony as
26 to the impact of the additional mental limitations on the available job base. The use of the
27 grids, however, is proper "where they completely and accurately represent a claimant's
28 limitations" and the claimant can "perform the full range of jobs in a given category."

1 *Tackett*, 180 F.3d at 1101. Although “the fact that a non-exertional limitation is alleged does
2 not automatically preclude applications of the grids,” the ALJ must first determine whether the
3 “claimant’s non-exertional limitations significantly limit the range of work permitted by his
4 exertional limitations.” *Id.* at 1102.

5 In the instant case, the ALJ found that the claimant’s non-exertional limitations did not
6 significantly limit the range of work permitted by her exertional limitations (AR 20). As stated,
7 this order finds that the ALJ adequately considered plaintiff’s subjective complaints based on
8 proper determination of credibility. This order therefore finds that the ALJ did not need to
9 obtain vocational testimony to properly apply the grids.

10 CONCLUSION

11 For the foregoing reasons, plaintiff’s motion for summary judgment is **DENIED** and
12 defendant’s cross-motion for summary judgment is **GRANTED**.

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14 **IT IS SO ORDERED.**

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16 Dated: August 4, 2006.

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19 WILLIAM ALSUP
20 UNITED STATES DISTRICT JUDGE
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